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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1995

Addendum

GUATEMALA*

[13 February 1997]

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* The initial report submitted by the Government of Guatemala is contained in document CAT/C/12/Add.5 and Add.6; for its consideration by the Committee, see documents CAT/C/SR.232, 233/Add.1 and Add.2, 237/Add.1 and the Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/51/44, paras. 42-57).

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Introduction

1. This document contains the first supplementary report (second periodic report) submitted by Guatemala to the United Nations Committee against Torture under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment pursuant to the obligation assumed by States parties to submit supplementary reports every four years. These reports describe the new measures taken by the State party in giving effect to the provisions of the Convention.

2. This report accordingly presents an account of the efforts made by the Government of Guatemala to comply with its international obligations in this respect during the period 31 June 1995 to 30 August 1996. This time span is explained by the fact that Guatemala's initial report was presented officially to the Committee against Torture at its 232nd and 233rd meetings on 16 November 1995. Furthermore, the Government of the Republic of Guatemala on 31 July 1995 submitted an addendum to its initial report which was reproduced by the Committee in document CAT/C/12/Add.6 of 10 August 1995. The present document summarizes its contents and also describes the efforts made by the Government of Guatemala in the light of the comments that the international community transmitted to it through the Committee against Torture.

3. Section I deals with the general situation prevailing in the country and particularly during the first few months of the new Government, which took office on 14 January this year.

4. Section II gives an account of the general context in which the human rights policy is being implemented and the most significant achievements in this area.

5. Section III analyses the situation in Guatemala from the standpoint of the rights protected by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This analysis is based on information published not only by the United Nations Human Rights Verification Mission in Guatemala (MINUGUA) but also by the most important non-governmental organizations (NGOs) working to promote and protect human rights.

6. Section IV describes the main activities being carried out in order to implement the provisions of the Convention, as well as the obstacles encountered by the Government in its efforts to improve the situation in the light of the decision and undertaking to redouble "efforts that have hitherto been inadequate and to overcome hitherto insuperable obstacles".*

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* Statement by Mr. Alvaro Arzú Trigoyen on assuming the office of President of the Republic on 14 January 1996.

I. THE GENERAL SITUATION IN THE COUNTRY

7. In view of the transparency of the results of the electoral process that began at the end of 1995 and came to an end on 7 January last with a second round of balloting, it may be said that it constitutes a resolute step forward in the consolidation of the democratization process, particularly as for the first time it entailed broad participation by various segments of society such as the indigenous population and human rights advocates.

8. This point is also of importance insofar as the elections resulted not only in a change of administration but also changes and transformations towards genuine democratization, which can be achieved only if major efforts are made in sensitive areas such as security of person, the peace agenda, measures to curb impunity, discrimination and privileges, the improvement of living conditions and the modernization of the State, that constitute the main elements on which the Government proposal for 1996-2000 proposal has been based.

9. The country's present situation is influenced to a great extent by activities connected with the peace negotiation process. In this respect, the Government's first act was to establish a new Government Peace Commission which created conditions favourable for negotiations that will undoubtedly result in a firm and lasting peace agreement, thereby putting an end to the armed conflict that has plagued our society for the past 36 years.

10. In addition, the Comandacia General de la Unidad Revolucionaria Nacional Guatemalteca (URNG) unilaterally decided to suspend offensive military operations against military objectives. The President of the Republic, in his capacity as Commander in Chief of the Army, responded by officially announcing that Guatemala's army, was also being ordered through its military commanders, to suspend counter-insurgency operations.

11. Once this new scenario had been brought into being, it became possible, on 6 May last, to sign the Agreement on Social and Economic Aspects and the Agrarian Situation in Mexico City. The content of this Agreement is in itself of importance, since it highlights various matters such as social participation and concertation, the participation of women in economic and social development, education and training, health, social security, housing, access to land and production resources, support structures, the legal framework and judicial guarantees, labour protection, protection of the environment, resources, modernization of the public administration and fiscal policy, on the basis of which the situation in post-war Guatemala will be tackled.

12. The peace negotiation process has followed its course and hopefully it will shortly be possible to sign the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society.

13. In line with the efforts made to achieve the signature of a firm and lasting peace agreement, on 5 June 1996 the President of the Republic officially introduced the members of the Political Commission on International

Cooperation for Peace, which will be responsible for administering the international financial assistance to be used in implementing the agreements concluded during this process.

14. With respect to security of person, it is obvious that previous efforts made in this area have been inadequate since they failed to do away with insecurity, high risk levels, corruption and the critical situation as regards the administration of justice and law-enforcement which has created a climate that undermines the confidence of citizens in bodies responsible for ensuring their protection.

15. For this reason public security is to be protected under the Government's Programme for 1996-2000 in the following way: (a) protection of the exercise, in a free and responsible manner, the rights and freedoms of individuals and groups guaranteed by the Constitution of the Republic; (b) preventive action or reaction, as necessary, to minimize the risks to which persons, groups and communities are exposed in order to ensure that they are able to live together in a harmonious and peaceful fashion; (c) assistance to individuals, groups and communities in the event of a public emergency or calamity; (d) action to prevent the commission of offences, to investigate offences and prosecute their perpetrators; (e) restoration of normal and peaceful conditions by appropriate methods in the event of disturbances; and (f) the formulation of a public security policy.

16. There is clearly an urgent need for action to improve the administration of justice. This reflects recognition of the fact that legal proceedings are still slow, that magistrates and judges, secretaries, officials and court officers lack adequate training, that the cost of legal proceedings is beyond the means of the people, that there are not enough courts, whose location leaves much to be desired, that applications for proceedings must be submitted in writing and in Spanish and in most cases with the help of a lawyer, and that the new Code of Penal Procedure is not operational and calls for the participation of judges, defence lawyers and bilingual interpreters. It is also clear that social awareness is lacking, that persons responsible for the administration of justice are incapable of discharging their functions properly and that the officials and staff of the Judiciary act in an erratic way.

17. In view of this deplorable situation, the Government of the Republic, in its 1996-2000 Programme takes the view that it is vital to organize the Judiciary in an efficient manner and ensure the complete availability of its human and material resources so that it can provide legal safeguards and enforce the law when asked to do so by any citizen.

18. The Government's main objective in this area is to provide decisive support for the functional restructuring of the Judiciary on the basis of complete respect for and guarantees of the independence of the branches of government in order to restore the people's confidence in the administration of justice in accordance with the principles of accessibility, independence and efficiency.

19. If, on the other hand, arbitrariness, violence, corruption, impunity, the abuse of power and delays in the application of the law persist, the task of consolidating the rule of law will become even more difficult.

20. Of particular importance from the standpoint of bolstering the efforts needed to overcome the difficulties that still bedevil the exercise of human rights in Guatemala was the Mission of the United Nations Centre for Human Rights which visited the country at the end of May. The purpose of this visit was to identify areas requiring assistance under institutional aid programmes, such as the Office of the Procurator for Human Rights and the National Police.

II. THE HUMAN RIGHTS POLICY CONTEXT

21. The formulation of a new human rights policy reflects the fact that the State of Guatemala has made institutional progress in respect of such rights. However, existing legislation has failed to create the necessary confidence among citizens in the institutions responsible for ensuring that they can live together peacefully.

22. For this reason, the protection and defence of human rights must be consolidated. Yet this can be done only through greater participation by members of society as a whole so that they will be able, in a simple, open and reliable manner, to assert their rights and assume their responsibilities. In short, what is required is a general effort by society as a whole and not by the Government alone.

23. The formulation of a policy in this sense is possible only if it is based on national and international efforts that are coherent and realistic. In other words, what is needed is public recognition of our difficulties, errors and shortcomings and a search for practical and realistic solutions*.

24. The implementation of a policy of this nature calls for the restructuring of the relevant government bodies, and this is precisely what is being done by the Presidential Coordinating Committee for Government Human Rights Policy (COPREDEH) pursuant to the Government's commitments to the international community*. The following action is being taken as a result of its work:

(a) On the basis of direct contact with NGOs dealing with human rights and representatives of the victims, their version of the facts as well as reports of irregularities in the work of State bodies are being heard;

(b) When complaints against the State are received and investigated as a result of the identification of State agents as the likely perpetrators of human rights violations, their possible responsibility is to be recognized;

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* Statement by the Minister for Foreign Affairs of the Republic of Guatemala, Dr. Eduardo Stein, in the Commission on Human Rights at its fifty-second session in Geneva, Switzerland.

(c) COPREDEH is speeding up the execution of warrants issued by the courts for the arrest of persons accused of human rights violations;

(d) COPREDEH is supporting, to the best of its ability, the action and measures taken by the Public Prosecutor's Office and the National Police to ensure that the results of investigations carried out provide evidence enabling the authorities to initiate proceedings based on the principle of due process;

(e) The various bodies and services of the Executive are being urged to take effective action to curb the impunity from which the population has suffered;

(f) In accordance with the peace agreements, action is being taken to downsize and rationalize the armed forces and to disband the Voluntary Civil Defence Committees;

(g) A policy taking into account the actual situation that prevailed in the country during the past 36 years has been adopted in respect of cases before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. It is also considered that amicable solutions must be sought in respect of claims against the State;

(h) The body established to provide protection for threatened persons is being reactivated.

III. THE SITUATION AS REGARDS RIGHTS PROTECTED BY THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN GUATEMALA

25. Various bodies and NGOs have carried out a statistical analysis of the situation during the period 1 January to 30 June 1996 to determine how far human rights in Guatemala were or were not respected. All the statistics on rights protected by the Convention against Torture reveal a decline in the number of cases reported. On the other hand, complaints of cruel, inhuman or degrading treatment, and particularly of acts committed by agents of the State, are still being received.

26. As a result of MINUGUA's verification of the Comprehensive Agreement on Human Rights concluded by the Government of the Republic and the Unidad Revolucionaria Nacional Guatemalteca, the Mission in its fifth report to the United Nations Secretary-General (A/50/1006) of 19 July 1996 stated that only four cases of torture were reported during the period in question. These complaints involved the alleged violations of eight rights. Of these violations only two cases were subjected to the verification process and neither was substantiated.

27. The Mission received seven complaints of cruel, inhuman or degrading treatment involving the violation of 10 rights of the persons in question. Nine of these cases were verified and only five were substantiated.

28. With regard to ill-treatment, MINUGUA reported that a total of 39 complaints had been received which, according to the Mission, involved a total of 73 violations of the right to physical integrity; 27 violations were verified and 21 were substantiated.

29. During the same period, the Human Rights Office of the Archbishopric of Guatemala recorded a total of three documented cases of torture as well as 255 cases of threats. The Guatemalan Commission for Human Rights (CDHG) reported that, during the first six months of 1966, there had been 97 death threats and that in two cases of enforced disappearance the victims showed signs of having been tortured.

30. In evaluating the statistics in this area, it is noteworthy that, according to MINUGUA, "Even though complaints of torture have decreased, the large number of violations of the right to integrity and security of person show that the Government has not fully guaranteed this right, especially where cruel, inhuman or degrading treatment by State agents is concerned" (A/50/1006, para. 170). This confirms once again that the problem is the result of the State's weakness and does not reflect a deliberate policy pursued by Guatemala against its people. What is needed therefore is to develop and improve the necessary machinery enabling the State, through the Government, to fulfil its obligation to protect its population against such acts and to bring to justice State agents who are found to be responsible for these offences.

IV. INFORMATION ON MEASURES AND ACTIVITIES CONNECTED WITH THE APPLICATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

A. Measures to strengthen the rule of law

31. Pursuant to the recommendations addressed by the international community to the Government in the context of the advisory services received by Guatemala in the field of human rights, the Penal Code was amended by Decrees Nos. 18-95 and 58-95, adopted by Congress, to define the offences of extrajudicial execution, enforced disappearance and torture, which did not appear in Guatemalan legislation, since it is clear that such offences constitute a serious threat to society, mainly by encouraging insecurity, anxiety and disquiet, and place the physical integrity and lives of individuals at serious risk (see annex 1).

32. The institution of "military commissioner" has been done away with, and as a result 24,400 commissioners were demobilized on 14 September 1995. In order to complete this process, Congress, by Decree No. 79-95, amended the Organic Law of the Army and abolished this post. Furthermore, the Executive, on 15 September 1995, issued Government Order No. 434-95 rescinding the Regulations for Military Commissioners (see annex 2).

33. In addition, the Ministry of National Defence ordered all military commands to launch information campaigns at the national level to acquaint the population with this demobilization and to call in all the credentials of military commissioners or their collaborators to prevent them from being misused (Circulars Nos. DI-85-01-0086-07 and DI-85-01-0087-07 of 11 May 1996).

34. The implementation of these measures has the effect of strengthening the rule of law since the abolition of the post of military commissioner reinforces civil authority in areas where State agents were few and far between.

35. The information presented above constitutes official notification of the amendment of the Penal Code and the abolition of the institution of military commissioner, since these developments were only described verbally at the 232nd and 233rd meetings of the Committee against Torture on 16 November 1995.

36. The commitment to do away with all illegal ways in which persons perform their military service - which is a right and duty under the Constitution - as well as ways in which they are forced to do so against their will has been complied with.

37. The undertaking not to encourage or promote the formation of new Voluntary Civil Defence Committees is also being complied with. In this connection it may be noted that, independently of the possibility that the Agreement on a Firm and Lasting Peace might contain a reference to this subject, the disbandment of these Committees consisting of about 220,000 persons, of whom 15,000 were still armed, began on 15 July 1996.

38. On 9 August 1996, 800 regional Civilian Patrols were disarmed and disbanded in the town of Colotenango, Huehuetenango department; this action was important from the standpoint of the communities concerned which, like many others, had been affected by the armed conflict. This step, which had not been scheduled, was taken pursuant to a request by COPREDEH that priority should be given to demobilization in that region.

39. It may be added that the present Government is of the view that this demobilization does not relieve members of Voluntary Civil Defence Committees who may have committed acts punishable under the law of the obligation to appear before the courts to clarify their situation.

40. The Code of Penal Procedure was amended by Decree No. 32-96 adopted by Congress to make the administration of justice more efficient. The amendments in question prohibit alternative penalties (house arrest, surety, etc.) in proceedings against recidivists or habitual offenders or in the case of aggravated homicide, murder, parricide, aggravated rape, culpable rape, the rape of a minor under 12 years of age, kidnapping or abduction of any kind, sabotage, aggravated robbery and aggravated theft (see annex 3).

41. Decree No. 41-96 of the Congress of the Republic amended article 2 of the second part of Decree No. 214-1878, Military Code, and deleted article 58 (f) of the Judiciary Act, Decree No. 2-89 of the Congress of the Republic, thereby transferring jurisdiction over essentially military offences or minor offences to the courts established by the Military Code, and making the Code of Penal Procedure applicable in cases of offences, minor offences and similar acts under the ordinary law committed by members of the armed forces, who will be tried by the ordinary courts covered by the Judiciary Act. This reform reflects one of MINUGUA's recommendations concerning the reform of the military courts. As a result, since 24 July of this year about 400 cases

involving offences under the ordinary law of which members of the army were accused and that were being dealt with by the military courts were transferred to the civil courts (see annex 4).

42. A large number of the members of the National Police and Financial Police have been dismissed and turned over to the authorities for alleged participation in violations of human rights and for minor offences justifying their replacement. During the first stage of this purge, 118 members of the National Police were handed over to the authorities and during the second the same fate befell a further 122, mainly for acts of corruption. Six former members of the Police are being sought, accused of abuses against street children.

43. The Congress of the Republic, by Decree No. 63-96, amended the Weapons and Munitions Act so as to prohibit the bearing of arms by persons under 25 years of age with the exception of those who are active members of the army and the civil security forces (see annex 5). It is noteworthy that, during the first few months of 1996, the number of weapons confiscated by the security forces increased considerably, the National Police seizing 1,108 weapons during this period in comparison with 572 during the same period of 1995. Greater efforts to control the proliferation of weapons in the possession of individuals resulted in a doubling of the number of weapons seized this quarter in comparison with the previous period, and enforcement of the provisions of the above Act will enable the Government gradually to master the situation.

B. Programmes for the intensive training of prosecutors, judges and police officers

44. The Public Prosecutor's Office, through its Training, Education and Human Resources Development Unit, and with the support of MINUGUA and the Centre for Strengthening the Rule of Law (CREA), offered various courses on the following subjects between May and November 1995:

(a) The handling of cases;

(b) The system of criminal justice (initial and intermediary); and

(c) Introduction to criminal investigation procedures.

45. These courses were organized for prosecutors and court officers, of whom 528 participated (104 women and 424 men).

46. During the period from March to June 1996, the Public Prosecutor's Office, with the assistance of CREA, organized two seminars on (a) specific procedure in legislation on criminal proceedings and (b) the theory of offences. Both seminars were intended for district prosecutors and court officials, of whom 278 participated (56 women and 222 men).

47. In 1995, the Judiciary, through its College of Legal Studies, offered 58 various types of training in which 1,778 members of the Judiciary participated. Between January and July 1996, 44 tra_ning courses attended by 473 members of the Judiciary were given.

48. Between February and June 1996, 24 courses were offered under the Institutional Criminal Investigation Training Programme (ICITAP) and attended by 557 prosecutors and staff of the Public Prosecutor's Office, National Police investigators and members of the Anti-Drug Operations Department of the Financial Police.

49. The Joint MINUGUA-UNDP Unit is offering a basic course for future National Police officers, and a 6-month programme of studies was developed for this purpose. The course is being attended by 480 students from the National Police Academy. The Joint Unit is also developing teaching materials to be used in the programme of studies.

50. MINUGUA is making efforts to improve the efficiency of the National Police by assigning to it five police observers who initiated this process in the key areas of police training and criminal investigation. Similarly, the Mission recommended the introduction of a system of rotation within the Identity Card Office and the Criminological Investigation Department in order to improve the coordination demanded by the investigation process.

51. During the first six months of 1996, COPREDEH organized courses on human rights for 1,677 members of the National Police and Financial Police.

C. Facilities and financial resources made available to prosecutors, judges and the National Police with a view to improving law enforcement

52. It is clear that the Public Prosecutor's Office must be strengthened if it is to overcome obvious shortcomings. For this purpose, a cooperation agreement was concluded between the Public Prosecutor's Office and MINUGUA in February 1995 and was renewed in August 1995.

53. This agreement resulted in the establishment of the Technical Advisory Unit. During the past few months this Unit has been drawing up the first draft of the Prosecutor's Manual, and it is also preparing appropriate forms to facilitate the work of the Public Prosecutor's Office. In addition it has drawn up the draft regulations for the career structure of the Public Prosecutor's Office and on the functioning of the Council of the Public Prosecutor's Office, which were approved in February 1996.

54. Under this agreement, the Procurator-General was provided with advice concerning instructions of a general nature to be used in the technical organization of the Public Prosecutor's Office. To this end, a comprehensive plan for the reorganization of the Metropolitan Procurator-General's Office is being drawn up. Cooperation with the National Police is being improved and arrangements are being made which in the near future will result in the harmonization of scientific investigation methods.

55. In view of the appointment of a new Procurator-General on 16 May 1996, it was decided that the resources available to the Public Prosecutor's Office should be allocated in a way that would facilitate the work of prosecutors. This was done in the following manner:

(a) District prosecutors were provided with computers as well as furniture and office equipment which will help to rationalize the work of the Public Prosecutor's Office; and

(b) District prosecutors were provided with vehicles and the equipment they need having regard to the requirements and special features of each region.

56. MINUGUA is doing a great deal to promote the administration of justice in Guatemala and to this end it is supporting the following projects:

(a) Establishment of a Centre for the Administration of Justice for Area Ixil, through which the Judiciary will establish a court and a Public Defender's Office in this area and provide translation and interpretation services for Maya languages. The Public Prosecutor's Office will provide a prosecutor, the National Police, a local police station, and the National Fund for Peace (FONAPAZ) will finance the cost of their equipment as well as salaries for one year. The project is to be implemented this year;

(b) The Administration of Justice and Linguistic Pluralism Project. The purpose of this project is to incorporate Maya languages into the administration of justice system. The project has been approved by the Judiciary and the Public Prosecutor's Office which, together with regional indigenous organizations are participating in it;

(c) The establishment of peoples' buffets in the Quiché and the Petén departments in cooperation with the local authorities and private universities;

(d) Seminars on local Solutions for the Administration of Justice which are intended to stimulate dialogue and provide joint training for various officials of the administration of justice system such as prosecutors of the Public Prosecutor's Office, judges and National Police officers;

(e) Technical Cooperation Agreement with the Public Criminal Defence Service of the Judiciary.

57. The wages of the civil security forces must be increased as a matter of urgency and these forces must be provided with the equipment and weapons they need to perform their functions in the most efficient manner. There are a large number of shortcomings in this area although during the first six months of the present Government over 25 million quetzales were spent on the purchase of this equipment.

58. The National Police have authorized the use of the phone number 110 on a 24-hour basis by persons wishing to make complaints or to convey information of a confidential nature. This service has proved its value as a law-enforcement device since it enables the population to cooperate with the authorities in combating organized crime.

D. Measures taken to protect witnesses, judges and prosecutors who have been threatened or intimidated

59. The situations created by threats directed at judges, prosecutors and witnesses obliged the National Police to form a special brigade to provide them with a measure of protection.

60. Moreover, the Congress of the Republic has approved, by Decree No. 72-96, an Act establishing the Service for the Protection of Persons involved in Proceedings and Persons connecting with the Administration of Justice. This Decree states that, in order to ensure the effective administration of justice and the integrity and security of judges, prosecutors, defence lawyers and other persons participating in proceedings, such persons may in future, should they be threatened, ask to have their telephones tapped so that the source of the threats can be determined.

61. The body in charge of this Service consists of officials from the Office of the Attorney-General of the Republic and the Ministry of the Interior plus the Director of the Office for Protection, who will form a council responsible for examining requests and deciding whether or not to provide protection.

62. The service offered under this Act is made available on the basis of an evaluation carried out by the Office; what has to be determined in the case of witnesses is whether the risk is real, the seriousness of the punishable act, the probative value of the declaration, and whether information leading to the identification of participants in other acts connected with the case can be obtained by other means.

63. A study on security was carried out by the Public Prosecutor's Office with a view to drawing up a body of recommendations that would be of practical use to prosecutors and the staff of the Public Prosecutor's office in their work. These recommendations were used as a basis for the preparation of a document entitled Security Instructions for Judicial Officials and Officials of the Public Prosecutor's Office.

E. Limitations on the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

64. Notwithstanding the progress that has been made, it is obvious that efforts to comply with the provisions of the Convention against Torture are encountering various difficulties. The identification of the main ones, and above all the search for possible alternative ways of overcoming them, has obliged the Government to recognize that what has been done so far is not enough.

65. What must be taken into account in this connection is the continued existence of various factors, such as (a) a climate of violence that creates a feeling of insecurity among citizens; (b) the large number of threats, abductions and other offences whose perpetrators have not been identified; and (c) the reservations of the population about the effectiveness of the bodies responsible for investigating and punishing offences, which to some extent explains why individuals decide to do justice themselves. Although this

happens in only a few cases greater efforts have to be made by the authorities to put an end to the practice, which is unacceptable, as stated by MINUGUA in its fifth report.

66. There are a number of reasons for this situation which in a way explain the existence of the difficulties being encountered. However, the Government is endeavouring to overcome them so as to be able in the near future to provide citizens with the security to which they are entitled and to live up to its obligations under the agreements and conventions to which the State of Guatemala has acceded, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the circumstances, action must be taken to promote the implementation of a comprehensive policy to curb impunity as well as to establish effective coordination between the Judiciary, the Public Prosecutor's Office and the security forces.

List of annexes*

1. Decree No. 48-95 of the Congress of the Republic of Guatemala on the amendment of the Penal Code, Decree No. 17-73.

2. Decree No. 79-95 of the Congress of the Republic of Guatemala.

3. Decree No. 32-96 of the Congress of the Republic of Guatemala.

4. Decree No. 41-96 of the Congress of the Republic of Guatemala.

5. Decree No. 63-96 of the Congress of the Republic of Guatemala.

6. Decree No. 70-96 of the Congress of the Republic of Guatemala.

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* The annexes may be consulted in the archives of the United Nations Centre for Human Rights.

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1995

Addendum

NEW ZEALAND

[25 February 1997]

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* The initial report submitted by the Government of New Zealand is contained in document CAT/C/12/Add.2; for its consideration by the Committee, see documents CAT/C/SR.126 and 127 and Add.2, and Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44 (A/48/44), paras. 133-160.

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Introduction

1. Following is New Zealand's first supplementary report to the Committee against Torture submitted in accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This report covers the review period 9 January 1991 to 8 January 1995, although reference is made to more recent developments where appropriate. It deals with new measures which give effect to the provisions of the Convention and other relevant developments. It also addresses issues raised by the Committee against Torture in its consideration of New Zealand's initial report.

2. This report supplements and should be read in conjunction with New Zealand's initial report submitted in July 1992 (CAT/C/12/Add.2) and the consideration of that initial report by the Committee in November 1992 and February 1993 (CAT/C/SR.126, CAT/C/SR.127 and CAT/C/SR.127/Add.2). Reference should also be made to the core document of New Zealand (HRI/CORE/1/Add.33) submitted on 28 September 1993 in accordance with the guidelines contained in document HRI/CORE/1.

I. SUMMARY OF KEY DEVELOPMENTS

3. New Zealand's initial report outlined the legislative, judicial, administrative and other measures existing in New Zealand which gave effect to the provisions of the Convention. The framework outlined in the initial report remained substantially in place. Where key legislative and regulatory developments have occurred, they are summarized below (with reference to the relevant article of the Convention against Torture) and outlined in detail in Parts II and III of the report. Those developments are:

(a) The proposal of legislation to simplify processes involved in arranging extradition between New Zealand and other countries (art. 8);

(b) The passage into law of the Mutual Assistance in Criminal Matters Act 1992 (art. 9);

(c) The revision of training procedures for prison officers relating to the prohibition against torture (art. 10);

(d) The development of standards for community-based residential services with the objective of safeguarding children in care (art. 10);

(e) The passage into law of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (arts. 10, 11, 12, 13);

(f) The passage into law of the Accident Rehabilitation and Compensation Insurance Act 1992 (art. 14);

(g) The passage into law of the Health and Disability Commissioner Act 1994 (arts. 10, 12, 13);

(h) The decision of the Court of Appeal in Simpson v. Attorney-General [1994] 3 NZLR 667, which recognized the ability of individuals to seek compensation directly from the State for breach of the individual's rights under the New Zealand Bill of Rights Act 1990 (art. 14).

4. In the period under review, no one has been convicted or charged with committing an act of torture in New Zealand as the term "torture" is defined under the Convention. As at January 1995, a police investigation was continuing into complaints by prisoners at a New Zealand prison alleging assault by prison officers. The complaints and follow-up are detailed in Part II of the report.

II. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

5. The information supplied in New Zealand's initial report still applies in full with reference to articles 2, 4, 5, 6 and 7.

Article 3

6. Some procedural changes have been made to the refugee status application process outlined in New Zealand's initial report (para. 3.3). The Refugee Status Branch of the Immigration Service now undertakes initial determination of applications. The Refugee Status Appeals Authority remains in place with an independent lawyer as the professional chair. Other members, including independent lawyers and judges hold part-time and full-time positions. The Canberra office of the Office of the United Nations High Commissioner for Refugees (UNHCR) periodically sends representatives to Authority hearings.

7. This change from an interdepartmental part-time authority to a dedicated staff led to improved independence, transparency of process and efficiency. Therefore, there were better procedures for dealing with the increased number of refugee applications being made.

Article 8

8. The need to review New Zealand's extradition legislation has been recognized for some time. The previous Government had given approval to the inclusion of an extradition bill on the 1996 legislative programme. However, future work on an extradition bill will now be dependent on the new Government. If enacted, the bill would simplify the processes involved in arranging extradition between New Zealand and other countries, both Commonwealth and non-Commonwealth. In particular, procedures for establishing extradition relationships with non-Commonwealth countries would be streamlined by allowing such relationships to be established without a treaty, or by way of simple treaty.

Article 9

9. New Zealand's initial report (para. 9.1) foreshadowed the passage of a draft bill on mutual assistance in criminal matters. It was passed into law as the Mutual Assistance in Criminal Matters Act 1992. That Act provides a legislative basis for New Zealand to enter into arrangements with other

parties from which New Zealand can request and to which it can provide assistance specifically in relation to criminal matters. These matters include investigations, proceedings, and the issuing and enforcement of orders relating to the proceeds of crime. Information relevant to investigations into offences referred to in article 4 of the Convention is covered by the Mutual Assistance in Criminal Matters Act 1992. That legislation provides for requests for mutual assistance from countries which are prescribed under that Act by Order in Council. Prescription is usually preceded by the negotiation of a Mutual Assistance Treaty, although this is not essential.

Article 10

Penal institutions

10. As foreshadowed in New Zealand's initial report (para. 10.3), the prison officer training manuals have been revised and now include specific reference to the prohibition of acts of torture. The compulsory training course for all probationary prison officers now covers the prohibition on torture, in the context of the Crimes of Torture Act 1989. A further module relating to Acts and Regulations, which is part of optional continuing education for prison officers, also covers the prohibition on torture. These courses are conducted by the New Zealand Corrections Staff College.

Children and young persons

11. Further developments have been made in the area of protection and treatment of children and young persons in the care of the State as outlined in New Zealand's initial report (para. 10.5 and 10.6). The Department of Social Welfare now operates five residences nationally. These reflect the requirements of the Children, Young Persons, and Their Families Act 1989 and the Department of Social Welfare's Residential Strategy, that residential care should be considered only as the option of last resort in the placement of children and young persons who have offended, or are in need of care or protection. Moreover, residential care is an option only in cases where parent(s) and family(ies) are unable, or have been deemed unable, to meet the care or control needs of their children or young persons. Two of the five residences operated by the Department provide both care and protection, and youth justice programmes. Two residences provide youth justice programmes only, and one a care and protection programme only. (In accordance with the Department's Residential Strategy, all care and protection facilities are being separated from youth justice facilities.)

12. Standards for the approval of community-based residential services have been developed by the New Zealand Community Funding Agency (the funding and contracting agency for the Department of Social Welfare). The objective is to safeguard children in care. The standards cover child and family support services and set out specific requirements for community providers of overnight care for children. They include the need for community providers to:

(a) Provide care to children in a safe, age-appropriate and family-like setting. Children's physical, social, emotional, psychological, cultural, health, educational and recreational needs must be adequately catered for. Children must be kept safe from risk or harm and from emotional, sexual or physical abuse;

(b) Care for children or young persons in an environment where no corporal, physical or emotional punishment is to be administered;

(c) Vet potential caregivers and staff, and ask any person involved in service delivery to sign a declaration fully stating any criminal convictions;

(d) Set out a clearly understood grievance procedure and policy to deal with complaints and reported/suspected abuse, neglect or ill-treatment of any child or young person in care;

(e) Provide a safe physical environment.

Medical professionals

13. During the reporting period the Mental Health Act 1969 outlined in New Zealand's initial report (para. 10.9) has been repealed and replaced by the Mental Health (Compulsory Assessment and Treatment) Act 1992. Under the new Act it continues to be an offence for a person concerned with the care, oversight and control of mentally disordered people to neglect or ill-treat them. The offences are punishable on summary conviction by way of a fine. In addition, mistreatment of medical patients can be the subject of a complaint to the newly established Health and Disability Commissioner whose impartial investigation can lead to public reports, revocation of professional registration, or monetary fines.

Article 11

14. Further to information contained in New Zealand's initial report (para. 11.3), only a Department of Social Welfare residence can operate a secure care or custody unit for the detention of children and young persons. Admission of children and young persons to "secure" detention is tightly controlled. Children and young persons can only be admitted to resident secure units for two reasons. The first is that their behaviour is a threat to themselves and/or others. The second is that there are grounds to believe that they are likely to abscond. In all cases, a child or young person can only be admitted to the secure unit with the approval of either a senior residential social worker or the residence manager. The police and courts do not have the statutory authority to order a child or young person placed in secure care, but they are able to make recommendations to that effect. Detention of a child or young person in secure care cannot exceed 72 hours. Where the Department wishes to detain a child or young person in secure care for longer, it must make special application to either the Family Court or the Youth Court (depending on the age of the defendant and the nature of the case) for approval. If the Court is satisfied with the evidence provided by the Department in support of its application, the Court is then able to approve

the child's or young person's continued detention in secure care for a maximum of 14 days. All placements in secure care are subject to 24-hour reviews by senior residential social workers.

15. The care of a person who is held involuntarily because it has been found that he or she is mentally disordered, is now regulated by the Mental Health (Compulsory Assessment and Treatment) Act 1992 (see para. 13 above), replacing the provisions outlined in New Zealand's initial report (para. 11.4). That Act provides for the assessment and treatment of patients and for the regular review of their condition and legal status. The first part of that system involves the regular clinical review of the patient's condition by the responsible clinician in consultation with other health professionals concerned with the case. The clinical review must be conducted no later than three months after the date of the compulsory treatment order and, after that, at intervals of no more than six months. Where a patient who is subject to a compulsory treatment order is considered fit to be released as a result of a clinical review, he or she must be released from compulsory status immediately. If the patient is not fit to be released, he or she (or specified others acting on the patient's behalf) may apply to the Review Tribunal for a review of the patient's legal status. Where the Tribunal does not consider that the patient is fit to be released, an appeal may be made to the District Court for a review of the Tribunal's decision. A patient's responsible clinician may release the patient from compulsory assessment or treatment at any time.

Article 12

Penal institutions

16. In January 1993, the Inspectorate of the Penal Division of the Department of Justice received allegations of abuse by seven prison inmates against several staff members at a penal institution, Mangaroa Prison. It was alleged that inmates had been beaten by prison officers with fists and boots and denied medical attention, food and shelter.

17. As a result of these complaints by inmates, the following steps were taken:

(a) A firm of private investigators was contracted to carry out an inquiry into the incidents;

(b) A number of prison officers were suspended pending disciplinary proceedings. Subsequent disciplinary charges resulted in disciplinary action, including dismissal, against those prison officers involved;

(c) The Minister of Justice commissioned a ministerial inquiry into management practices at Mangaroa Prison. It focused on factors which may have contributed to the occurrence of staff misconduct, and on making recommendations on any matters which may prevent similar incidents in the future, either at Mangaroa Prison or at other institutions. (The inquiry was not to be an investigation of the incidents themselves - this was undertaken

by the police as outlined below.) The resulting report - the Logan Report - was published in July 1993, and many of its recommendations have been, or are in the process of being implemented;

(d) The Department of Justice requested the views of the Human Rights Commission on the Government's responsibilities under the Convention, in light of the incidents at Mangaroa;

(e) The matter was subsequently referred by the Department of Justice to the police. The police inquiry was directed at attempting to find sufficient evidence to recommend to the Solicitor General that one or more officers be investigated under the Crimes of Torture Act 1989. As of 8 January 1995, the investigation was still ongoing.

18. The inquiry ordered by the Minister of Justice into practices at Mangaroa Prison looked at the possible causes of misconduct, organization and staffing issues, and management strategies and practices. The resulting Logan Report made a number of specific recommendations in relation to the prison, as well as more general recommendations relating to the reform of the New Zealand penal system.

19. The specific recommendations for Mangaroa Prison have been implemented in the following ways:

(a) The appointment of a human resources manager;

(b) Improving communications in the prison management team through the development of a prison management plan to integrate the tasks of daily prison management;

(c) Beginning remedial training for staff to correct identified problems by conducting skills assessments and regular in-house training. A skills development programme is being developed and regular ongoing training will continue;

(d) Training in supervision and leadership skills for supervisory staff, as well as training in performance assessment, coaching and counselling skills;

(e) The establishment of a bicultural development plan for prison staff and inmates;

(f) Removing physical partitions within the prison to facilitate better access, communication, and inmate-staff and inmate-inmate interaction.

20. Although the primary focus of the inquiry was on Mangaroa Prison, the report also made a number of recommendations of general applicability to all prisons. These recommendations aim to consolidate and enhance the strategic reform of the prison system (which the Penal Division of the Department of Justice had begun in 1989), and to prevent incidents, such as the alleged misconduct outlined above, occurring in the future.

21. The following summarizes the major recommendations and any action taken to implement them during the review period:

(a) Fair procedures for both inmates and staff to resolve allegations of misconduct:

(i) Establish an independent Prison Complaints Authority to receive complaints from inmates of alleged misconduct and neglect of duty by prison staff, to investigate those complaints, and to make recommendations to the Secretary of Justice and report to Parliament. The Government has agreed to establish a discrete unit within the Office of the Ombudsman to deal with prison inmate complaints,

(ii) Restructure the prison inspectorate to comprise trained inspectors operating from the Criminal Justice Development Unit of the Department of Justice, and reporting directly to the Secretary for Justice. The inspectorate now exists in the recommended form. The Corrections Operations Division of the Department of Justice, which is responsible for prisons, developed an internal auditing group known as Correctional Audit Services. Pursuant to the provisions of Penal Institutions Act 1954, the powers and functions of inspectors include the following:

(a) to visit any penal institution from time to time to interview any inmate;

(b) to examine the treatment and conduct of inmates;

(c) to hear any complaint made by an inmate;

(d) to inquire into all abuses or alleged abuses within the institution or in connection with it;

(e) to inquire into any matter referred by the Secretary for Justice;

(f) for any of the above purposes, to take evidence on oath or otherwise; and

(g) to report in writing to the Secretary for Justice on any of these matters or on other matters relating to penal institutions;

(iii) Redefine the role of Visiting Justices in disciplinary proceedings. District Court Judges, rather than Justices of the Peace, now generally conduct hearings against inmates charged with serious misconduct. New national guidelines and requirements governing inmate rights and disciplinary procedures have been published and are available to inmates;

(iv) The Justice Department reinforced the status of inmate rights by sending formal reminders to all prison management, and strengthening the requirements in General Managers' personal performance plans to emphasize that inmate privileges cannot be withdrawn as a punishment for an alleged infraction without a disciplinary hearing;

(v) Establish a clear, and auditable, document-trail in prison administration to facilitate any investigation, audit, or review. An inmate complaints registration system and new procedures have been developed;

(vi) The Justice Department now provides greater assistance regarding inmates' rights by providing more information to inmates. On induction inmates are given a booklet explaining their rights and newssheets on relevant issues are distributed. Staff give advice on procedural matters to those inmates facing internal disciplinary proceedings;

(vii) Modifications have been made to procedures for controlling and restraining violent and uncooperative inmates. The new instructions emphasize the use of negotiating techniques as the preferred approach, with physical restraint considered only as a last resort;

(b) Staff Development. The importance of revising recruitment procedures and improving the expertise of selectors through skills training was identified. The initial prison officer training programme is being reviewed and a new programme in line with the Logan Report's recommendations was implemented early in 1995 (see paragraph 10 regarding incorporation of the prohibition against torture in training modules).

22. Some months after the incidents at Mangaroa Prison, allegations were made that prison officers at Wellington Prison had assaulted inmates. The Department of Justice engaged a firm of private investigators to carry out an inquiry, which concluded by recommending that the allegations merited further investigation. A Department of Justice review team then undertook a comprehensive investigation, which resulted in disciplinary action being taken against nine officers.

Psychiatric hospitals

23. The enactment of the Mental Health (Compulsory Assessment and Treatment) Act 1992 amends the procedures for dealing with complaints by patients in psychiatric hospitals outlined in New Zealand's initial report (para. 13.3). Under that Act, district inspectors or official visitors are appointed to investigate complaints. Every patient is seen by a district inspector or official visitor at least twice during the assessment phase and after clinical reviews. Where a complaint has substance, the district inspector or official visitor shall report the matter to the Director of Area Mental Health Services. The Director must take necessary steps to remedy the matter. If the patient is not satisfied with the outcome of the investigation, he or she may have the matter reviewed by the Review Tribunal.

24. The enactment of the Health and Disability Commissioner Act 1994 establishes another independent process for the investigation of alleged mistreatment or abuse of patients being held under a mental health compulsory assessment or treatment order. This Act requires the Health and Disability Commissioner to create a Code of Health and Disability Services Consumers' Rights which must be complied with whenever health and disability services are being delivered to the public or an individual. The Act requires the Code to include the right to appropriate standards of service and the principles of informed consent to medical treatment. An act of torture or other cruel, inhuman or degrading treatment that occurs during the provision of health or disability services would clearly constitute a breach of the Code of Health and Disability Services Consumers' Rights.

Article 13

25. District inspectors (who are lawyers) and official visitors appointed under the Mental Health (Compulsory Assessment and Treatment) Act 1992, have the power to investigate complaints from patients using mental health services as noted above (para. 23).

26. The Health and Disability Commissioner is also required to promote and enforce the Code of Health and Disability Services Consumers' Rights by receiving complaints about medical professionals and organizations. The Commissioner is required to conduct impartial investigations, arrange mediations and refer situations to a Director of Proceedings. The Director of Proceedings can then take action in the relevant professional registration body or the Complaints Review Tribunal. These actions can lead to various sanctions including the medical professionals losing their licence to practice in New Zealand, and monetary fines to compensate the aggrieved individual. If the Director of Proceedings refuses to conduct such actions, the legislation allows the aggrieved individual to initiate these actions personally. While District inspectors will continue to assist persons being treated under the Mental Health Act, the role of official visitors is currently under review as a result of the Health and Disability Commissioner Act 1994.

Article 14

27. As foreshadowed in New Zealand's initial report (para. 14.1), the Accident Compensation Act 1982 has been replaced by the Accident, Rehabilitation and Compensation Insurance Act 1992. This new legislation now provides compensation through the Accident Rehabilitation and Compensation Insurance (ARCI) scheme which is administered by a Crown entity (the Accident Rehabilitation and Compensation Insurance Corporation). Under the new scheme, persons who suffer personal injury by accident (including torture) can still obtain compensation for ordinary damages, medical treatment, rehabilitation and other forms of assistance. Emotional and mental harm is also covered by the ARCI scheme when it is an outcome of physical injury suffered by the person claiming assistance.

28. Although the statements made in paragraphs 14.3 and 14.4 of New Zealand's initial report continue to represent the situation under the Crimes of Torture Act 1989, developments in the judicial interpretation of the New Zealand Bill of Rights Act 1990 will be of interest to the Committee.

In 1994 the New Zealand Court of Appeal (Simpson v. Attorney-General [1994] 3 NZLR 667) accepted the possibility of a monetary damages claim against the Crown for a breach of the Bill of Rights Act. These monetary damages were designed to compensate an individual whose rights (under the Bill of Rights Act) were breached by a public servant or State official. Accordingly, it has now been established by the Court of Appeal's decision that if an individual's rights are breached by a State servant, and the courts have no other sufficient remedy to rectify the breach, the aggrieved individual can take a court action against the Attorney-General (as representative of the Crown) for monetary compensation. Given that section 9 of the Bill of Rights Act provides that "everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment", there is now the further possibility that an individual can be compensated for suffering such treatment by taking an action based on the Bill of Rights Act.

Tokelau

29. A new crime regulation system, and related procedures, was under development for Tokelau during the review period. The existing code is being modified to ensure consistency with Tokelau's obligations under international law concerning human rights issues. The new code is being developed in close consultation with Tokelau elders to ensure that it reflects Tokelauan needs, is consistent with Tokelauan custom and is determined by what is appropriate for Tokelau.

III. INFORMATION REQUESTED BY THE COMMITTEE

30. The information requested by the Committee during its consideration of New Zealand's initial report was provided during the discussion of the initial report or has been presented in Part II of this report. Where necessary, additional information and elaboration is supplied below. In particular, the Committee may wish to note the following in relation to its concluding comments on New Zealand's initial report:

(a) The Committee's concerns about the application of articles 8 and 9 of the Convention are being addressed by the planned legislation on extradition, and the passage of the Mutual Assistance in Criminal Matters Act 1992 (see paras. 8 and 9 of this report);

(b) Further information on New Zealand's reservation to article 14 is provided (see paragraphs 35-37 of this report).

31. With reference to the Committee's question regarding sentencing under the Crimes of Torture Act 1989, the following should be noted: There have been no prosecutions under the Crimes of Torture Act 1989. The offences of torture outlined in section 3 of that Act attract maximum penalties of 14 and 10 years' imprisonment, respectively. Therefore, if a person were to be successfully prosecuted his or her sentence would be set at the discretion of the judge having regard to the prescribed statutory maximum sentence, the principles of sentencing set out in the Criminal Justice Act 1995 and case law precedent. Because imprisonment is the prescribed maximum penalty it would be open to the judge to consider the full range of sentencing options available

under the Criminal Justice Act 1995. However, if the offence was one involving violence the statutory presumption in section 6 of that Act would favour the imposition of a full-time custodial sentence.

32. With reference to questions asked by members of the Committee relating to the Police Complaints Authority, the following should be noted: The avenues for complaints of torture relating to the actions of a police officer are the Police Complaints Authority and the New Zealand Police itself. Any complaints relating to alleged criminal actions by members of the police are taken very seriously and investigated with a view to prosecution. The fact that the Police Complaints Authority can choose to take no action where the complainant has knowledge of the matters under complaint for more than 12 months is not a statute of limitations. The Authority has discretion to decide to take no action in a range of circumstances where the complaint is trivial, frivolous, vexatious or not made in good faith. Whenever the Authority decides to take no action under this section it must inform the complainant of that decision and the reasons for it. Serious criminal offences such as those in the Crimes of Torture Act 1989 have no limitation period.

33. With reference to the Committee's question regarding the minimum age of prosecution under the Crimes of Torture Act 1989, the following should be noted: Under section 21 of the Crimes Act 1961 a child under the age of 10 is not criminally responsible and cannot be convicted of an offence. Under section 22 of that Act a child between the ages of 10 and 14 cannot be convicted of an offence unless he or she knew that his or her actions were wrong or contrary to the law. Section 272 (1) of the Children, Young Persons and Their Families Act 1989 (CYP&F Act 1989) states that criminal proceedings shall not be commenced against a child between the ages of 10 and 14 except when the child is alleged to have committed murder or manslaughter. Under the CYP&F Act 1989 a person aged 14 to 16 years who is not married is defined as a young person. Young persons may be prosecuted for criminal offences. As a general rule, however, their offending will be dealt with in the Youth Court in accordance with the provisions of the CYP&F Act 1989. Persons aged 17 years and above who commit an offence come within the jurisdiction of the District or High Court depending on the gravity of the offence committed.

34. With reference to the Committee's question regarding training for judges and lawyers, the following should be noted: In general, lawyers and judges do not receive compulsory training regarding the prohibition of torture, although the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment may be included in the curricula of some courses in international law and criminal law.

35. With reference to the Committee's questions regarding compensation for victims of torture, the following additional explanation is offered: where criminal proceedings have been instituted in relation to an offence committed under the Crimes of Torture Act 1989 a wide range of options are available to the court under the Criminal Justice Act 1985 in sentencing the offender. These include the imposition of a sentence of reparation under section 22 of that Act in any situation where the court is satisfied that any other person

suffered loss or damage to property or emotional harm. Section 11 of that Act requires the court to consider imposing a sentence of reparation in all cases unless it would be clearly inappropriate to do so.

36. Like the 1982 legislation (discussed in paragraph 14.1 of New Zealand's initial report) the 1992 ARCI scheme removes the right to lodge a civil claim for damages in a case of personal injury. However, the scheme does allow a victim to bring a civil claim for exemplary or punitive damages in addition to any claim under that ARCI. It may also be possible for a victim of torture to claim ordinary damages for false imprisonment. In both these civil claims, it is the person or persons responsible for the torture or cruel punishment who will be obliged to compensate the aggrieved individual.

37. Apart from the compensation available to the aggrieved individual under section 22 of the Criminal Justice Act, the ARCI scheme, or a civil court action for exemplary damages or false imprisonment, section 5 of the Crimes of Torture Act allows the Attorney-General a discretion to grant the victim compensation from the Crown. This compensation is possible regardless of whether the Crown was responsible for the acts committed or not. It is noted that the Attorney-General's discretion as specified in New Zealand's reservation to the Convention, and illustrated in section 5 of the Crimes of Torture Act, attracted concern from members of the Committee when discussing New Zealand's initial report. However, the New Zealand Court of Appeal's decision in Simpson v. the Attorney-General now allows a person whose rights (under the New Zealand Bill of Rights Act) were breached by a public servant to take a court action against the Crown for monetary compensation. Such an action means that the aggrieved individual does not have to rely simply on the Attorney-General's discretion to grant compensation. The courts are now able to directly award compensation to persons who have suffered torture or abuse at the hands of a public servant.

38. With reference to the Committee's questions regarding provision for refugees who have been victims of torture outside New Zealand, the following should be noted: New Zealand's refugee policy has meant that the Government has in effect undertaken a level of responsibility for families and children who may have suffered or are currently suffering the effects of torture occurring outside New Zealand. There are currently 16,000-20,000 refugees in New Zealand. The Department of Social Welfare purchases a number of support services, through the New Zealand Community Funding Agency, for which refugees are eligible. These services include community work and community development services. Assistance has been provided to aid the publication of "link" newspapers, an example of a more holistic approach to resettlement. The Department of Social Welfare also has an advocacy role for refugees as it does for Maori, women, youth, the aged, and other "disadvantaged" groups with special needs.

39. The Department of Social Welfare is also responsible for the administration of income support for refugees. As most statutory social service benefits in New Zealand require prior residence, people who are refugees will not usually qualify for services such as the Unemployment or Domestic Purposes Benefits until they have been resident in New Zealand for a required period of time, often a period of some years. If correct procedure is followed, however, these prior residence requirements may be waived and an

Emergency Benefit granted. This form of benefit will normally provide the same rates and conditions (excepting residence requirements) as apply to New Zealand residents.

40. Similarly, public health care would be available to most asylum-seekers, including those who have suffered torture, while they are going through the refugee application process. Such people would not, however, be able to access entitlements under the ARCI scheme that relate to their pre-existing injuries. Under the Accident Rehabilitation and Compensation Insurance Act 1992, cover for personal injury by accident is available only for injury that occurs in New Zealand or to a person who is ordinarily resident in New Zealand while he/she is overseas.

List of annexes*

STATUTES

1. Accident Rehabilitation and Compensation Insurance Act 1992

2. Children, Young Persons and their Families Act 1989

3. Health and Disability Commissioner Act 1994

4. Mental Health (Compulsory Assessment and Treatment) Act 1992

5. Mutual Assistance in Criminal Matters Act 1992

REPORTS

6. Ministerial Inquiry into Management Practices at Mangaroa Prison

ADMINISTRATIVE PROCEDURES

7. Corrections Staff College Probationary Prison Officers' Course Outline: Acts and Regulations - Crimes of Torture Act (inter alia)

8. Corrections Staff College Intermediate Acts and Regulations Course: Module 5 - Crimes of Torture Act 1989

CASES

9. Simpson v. Attorney-General [1994] 3 NZLR 667

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* The annexes are available for consultation in the files of the United Nations Centre for Human Rights.